



House of Representatives

General Assembly

File No. 402

February Session, 2014

Substitute House Bill No. 5274

House of Representatives, April 7, 2014

The Committee on Commerce reported through REP. PERONE of the 137th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING UNEMPLOYED INDIVIDUALS AND DISCRIMINATORY HIRING PRACTICES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2014*) (a) As used in this
2 section:

3 (1) "Employer" means any business owner, person, partnership,
4 corporation, limited liability company or association of persons acting
5 directly as, on behalf of or in the interest of such business owner,
6 person, partnership, corporation, limited liability company or
7 association in relation to employees. Employer includes the state, any
8 political subdivision thereof and any employment agency or
9 temporary help service;

10 (2) "Employment agency" means (A) an employment agency, as
11 defined in section 31-129 of the general statutes, (B) any agent,
12 representative or designee of such employment agency, (C) a person
13 who maintains an Internet web site that publishes advertisements or

14 announcements of job openings, and (D) a temporary help service;

15 (3) "Status as unemployed" means an individual's period of
16 unemployment, both past or present, regardless of duration; and

17 (4) "Temporary help service" means (A) a temporary help service, as
18 defined in section 31-129 of the general statutes, and (B) any agent,
19 representative or designee of such temporary help service.

20 (b) No employer shall:

21 (1) Publish in print, on the Internet or in any other medium, an
22 advertisement or announcement for any job vacancy in this state that
23 includes any provision: (A) Stating or indicating that an individual's
24 status as unemployed disqualifies such individual for a job, or (B)
25 stating or indicating that such employer will not consider an
26 individual for employment based on such individual's status as
27 unemployed;

28 (2) Disqualify an individual for employment based solely on such
29 individual's status as unemployed; or

30 (3) Request or direct an employment agency or temporary help
31 service not to refer an individual based solely on such individual's
32 status as unemployed.

33 (c) No employment agency or temporary help service shall:

34 (1) Publish in print, on the Internet or in any other medium, an
35 advertisement or announcement for any job vacancy in this state that
36 includes any provision: (A) Stating or indicating that an individual's
37 status as unemployed disqualifies such individual for a job, or (B)
38 stating or indicating that an employer will not consider an individual
39 for employment based on such individual's status as unemployed;

40 (2) Limit, segregate or classify an individual in any manner that may
41 limit such individual's access to information about jobs or referrals for
42 consideration of jobs because of such individual's status as

43 unemployed; or

44 (3) Disqualify or refuse to refer an individual for employment based
45 solely on such individual's status as unemployed.

46 (d) Nothing in this section shall be construed to prohibit an
47 employer, employment agency or temporary help service, or an agent,
48 representative or designee of such employer, employment agency or
49 temporary help service, from:

50 (1) Publishing in print or on the Internet an advertisement for a job
51 vacancy in this state that contains any provision: (A) Setting forth
52 qualifications for a job vacancy, including, but not limited to: (i)
53 Holding a current and valid professional or occupational license,
54 certificate, registration, permit or other credential, or (ii) a minimum
55 level of education or training, or professional, occupational or field
56 experience; or (B) stating that only individuals who are current
57 employees of the employer will be considered for such job vacancy;

58 (2) Setting forth qualifications for a job vacancy, including, but not
59 limited to: (A) Holding a current and valid professional or
60 occupational license, certificate, registration, permit or other credential,
61 or (B) a minimum level of education or training, or professional,
62 occupational or field experience;

63 (3) Stating that only individuals who are current employees of the
64 employer will be considered for such job vacancy;

65 (4) Taking into account the individual's employment history,
66 including recent relevant experience; or

67 (5) Inquiring as to the reasons for an individual's status as
68 unemployed.

69 (e) Any individual aggrieved by a violation of subsection (b) or (c)
70 of this section may file a complaint with the Labor Commissioner. The
71 Labor Commissioner may levy a civil penalty against any employer,
72 employment agency or temporary help service that the commissioner

73 finds to be in violation of subsection (b) or (c) of this section. Any
74 employer, employment agency or temporary help service that violates
75 any provision of this section may be liable to the Labor Department for
76 a civil penalty of five hundred dollars for the first violation of
77 subsection (b) or (c) of this section and one thousand dollars for each
78 subsequent violation of said subsections.

79 (f) Any party aggrieved by a decision of the commissioner pursuant
80 to subsection (e) of this section may appeal the decision to the Superior
81 Court in accordance with the provisions of chapter 54 of the general
82 statutes.

83 (g) The commissioner may request the Attorney General to bring an
84 action in the Superior Court to recover the penalties levied pursuant to
85 subsection (e) of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2014	New section

Statement of Legislative Commissioners:

In section 1(a)(2), subparagraphs (A) to (D), inclusive, were inserted for clarity. In section 1(a)(4), subparagraphs (A) and (B) were inserted for clarity. In section (1)(f) "pursuant to subsection (e) of this section" was inserted after "commissioner" for clarity.

CE *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 15 \$	FY 16 \$
Attorney General	GF - Potential Cost	Zero to 10,000	Zero to 10,000
Labor Dept.	GF - Potential Revenue Gain	Less than 5,000	Less than 5,000
Labor Dept.	GF - Potential Cost	Less than 1,000	Less than 1,000

Municipal Impact: None

Explanation

The bill prohibits various enumerated employment-related actions if they are based solely on a person's status as unemployed, and establishes a civil penalty of \$500 for the first offense and \$1,000 for subsequent offenses. This results in a cost of zero to \$10,000 annually beginning in FY 15 to the Office of the Attorney General for potential litigation costs related to the recovery of penalties established under the bill, as well as a potential cost of less than \$1,000 annually beginning in FY 15 to the Department of Labor (DOL) related to the administrative hearing process. This also results in a potential General Fund revenue gain of less than \$5,000 annually beginning in FY 15 to DOL, which may levy the civil penalties established under the bill.

The actual cost and revenue gain associated with the bill are dependent on: 1) the number of complaints received and civil penalties levied by the Labor Commissioner, 2) whether any such penalties are appealed, and 3) whether the Attorney General brings action to recover any penalties levied. Based on the results of a similar law in New Jersey, it is anticipated that the number of violations and

subsequent recoveries will be fewer than five in any given year.

Background

According to the New Jersey Department of Labor's Division of Wage and Hour Compliance, the Division has had one alleged violation since the law was passed in 2011. The assessment was appealed and is currently being upheld in the Superior Court Appellate Division pending a decision.

The Out Years

The annualized ongoing cost impact identified above would continue into the future subject to inflation. The annualized ongoing revenue impact identified above would remain constant into the future as penalty amounts are set by statute and are not subject to inflation.

Sources: New Jersey Department of Labor Division of Wage and Hour Compliance

OLR Bill Analysis**sHB 5274*****AN ACT CONCERNING UNEMPLOYED INDIVIDUALS AND DISCRIMINATORY HIRING PRACTICES.*****SUMMARY:**

This bill prohibits employers, employment agencies, and temporary help services from taking several actions if they are based solely on a person's "status as unemployed" (i.e., his or her past or present unemployed periods, regardless of their duration). The actions include (1) disqualifying a person from employment, (2) refusing to refer a person for employment (or requesting that he or she not be referred), and (3) limiting a person's access to information about a job.

The bill also prohibits employers, employment agencies, and temporary help services from publishing job advertisements or announcements in any medium that state or indicate that (1) a person's status as unemployed disqualifies him or her for a job or (2) an employer will not consider a person for a job based on his or her status as unemployed.

The bill specifies that it does not prohibit employers, employment agencies, or temporary help services from taking certain other actions, such as (1) requiring job applicants to hold valid licenses, registrations, or other credentials; (2) considering a person's employment history, including recent relevant experience; or (3) asking about the reasons behind a person's unemployment.

It also allows anyone aggrieved by a violation of its prohibitions to file a complaint with the labor commissioner, who can issue a \$500 fine against first-time violators and a \$1,000 fine for each subsequent violation. The commissioner can ask the attorney general to bring an action in civil court to recover the fines. Parties can appeal the

commissioner's decision to the Superior Court.

EFFECTIVE DATE: October 1, 2014

PROHIBITED ACTIONS

Employers

The bill prohibits employers from (1) disqualifying a person for employment solely because of the person's status as unemployed or (2) requesting that an employment agency or temporary help service not refer a person solely because of his or status as unemployed. Employers covered under the bill are any business owner, person, partnership, corporation, limited liability company (LLC), or association of persons acting directly as, on behalf of, or in the interest of an employer in relation to employees, including the state, its political subdivisions, employment agencies, and temporary help services.

Employment Agencies and Temporary Help Services

The bill prohibits employment agencies (including Internet websites that advertise job openings) and temporary help services from (1) disqualifying or refusing to refer a person for employment solely because of the person's status as unemployed or (2) limiting, segregating, or classifying a person based on his or her status as unemployed, in a way that limits his or her (a) access to information about a job or (b) job referrals.

An employment agency under the bill is (1) a business that receives compensation for procuring or offering to procure work for people seeking employment, (2) any agent of such a business, (3) a person who maintains an Internet web site that publishes job advertisements or announcements, or (4) a temporary help service. A temporary help service under the bill is a (1) person, company, society, association, LLC, or corporation with a business that directly employs people to furnish part-time or temporary help to others or (2) such a service's agent.

LIMITS ON BILL'S PROHIBITIONS

The bill specifies that it does not prohibit an employer, employment agency, temporary help service, or any of their agents, representatives, or designees from:

1. establishing minimum job qualifications, such as (a) holding a current and valid professional or occupational license, certificate, registration, permit, or other credential or (b) meeting minimum education, training, and experience levels;
2. stating that only the employer's current employees will be considered for a job;
3. publishing job advertisements in print or on the Internet that (a) present the job's minimum qualifications or (b) state that only the employer's current employees will be considered for a job;
4. considering a person's employment history, including recent relevant experience; or
5. asking for the reasons behind a person's past or present unemployment periods.

BACKGROUND

Related Bill

sHB 5054 (File no. 40), reported favorably by the Labor and Public Employees Committee, contains the same protections for unemployed job seekers, limits on prohibitions, and process for filing a complaint with the labor department.

COMMITTEE ACTION

Commerce Committee

Joint Favorable Substitute

Yea 11 Nay 6 (03/20/2014)